

# EXHIBIT 1



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July 16, 2020

**VIA EMAIL**

Spencer Sheehan  
Sheehan & Associates, P.C.  
505 Northern Boulevard, Suite 311  
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Re: *Webber v. McDonald's Corporation, No. 7:20-cv-02058 (S.D.N.Y.)*  
**Demand for Dismissal of Complaint**

Dear Mr. Sheehan:

As you know, I represent McDonald's Corporation ("McDonald's") in the above-referenced action. I'm writing to follow up on my June 17, 2020 letter, in which I explained that Plaintiff Emelina Webber's claims fail as a matter of law because, among other reasons, no reasonable consumer ordering a "Vanilla Cone" at McDonald's would interpret "Vanilla" as identifying the exclusive *ingredient* that gives the product its vanilla flavor. Because it is now abundantly clear that your client's claims have neither legal nor factual support, McDonald's demands that you dismiss the Complaint.

After I sent the June 17 letter, it came to my attention that your firm has been sponsoring a Facebook post about this case.<sup>1</sup> The post, which is shown below, includes a copyrighted image of a McDonald's Vanilla Cone below the following text: "Does your Vanilla Soft Serve Ice Cream contain real vanilla? Not according to class-action lawsuits and investigations. Is your favorite on the list?" The ad also links to a form where consumers can "Sign Up" to "Join The Investigation And Possible Class Action Lawsuit."

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<sup>1</sup> A screen capture taken of the post and related comments on July 7, 2020 is attached as Exhibit A to this letter. The URL of the post is:

<https://www.facebook.com/337674000260962/posts/520450308649996/?d=n>



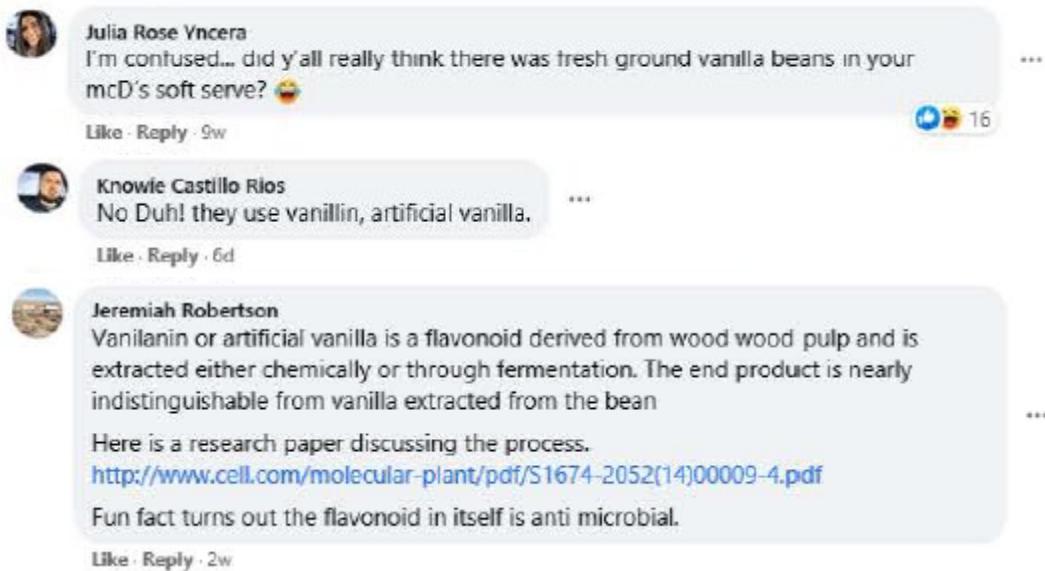
The post itself is misleading and defamatory. The post gives the impression that McDonald's vanilla soft serve does not contain real vanilla. As I explained in my June 17 letter, that is incorrect. McDonald's vanilla soft serve contains vanilla extract. Moreover, you have no factual basis for alleging otherwise; the similar allegations made in Ms. Webber's Complaint are merely speculation based on *inapplicable FDA regulations* and the alleged practices of *other, unidentified companies*.

More significant for Ms. Webber's case, however, are the comments from consumers responding to the post. None of the comments support Ms. Webber's claims. To the contrary, the vast majority of the comments *directly contradict key allegations* from the Complaint. For example:

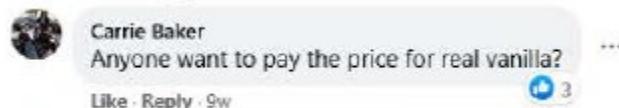
- The Complaint alleges that “[t]he designation of a type of ice cream as ‘Vanilla’ is understood by consumers to identify a product where . . . vanilla is the exclusive source of flavor.” (Compl. ¶ 121.) But the comments show that reasonable consumers distinguish *flavors* from *ingredients*, and do not take names used on restaurant menus literally:

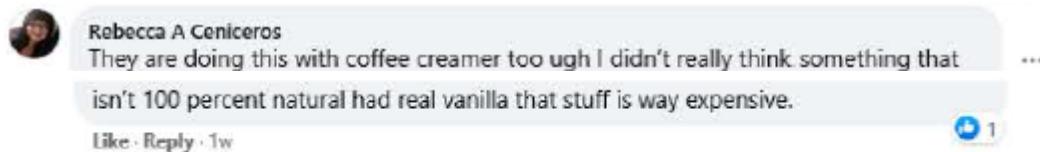


- The Complaint also alleges that “[t]he Product’s representations are misleading because it gives the impression it is flavored only from the characterizing vanilla flavor, though it includes flavor not derived from vanilla beans.” (Compl. ¶ 124.) The comments on your firm’s post, however, confirm that reasonable consumers were not misled, and some even know that vanilla flavor can come from other ingredients, which can be derived from vanilla or other sources:



- The Complaint’s theory of injury and damages relies on the allegation that “the product is sold at a premium price” (Compl. ¶ 131), but the comments suggest that reasonable consumers view McDonald’s as a good value and an alternative to higher-priced vanilla flavored products:





- According to the Complaint, “[h]ad plaintiff and class members known the truth, they would not have bought the Products or would have paid less for it.” (Compl. ¶ 129.) To the contrary, the comments indicate that the allegations in the Complaint are not material to reasonable consumers:



These responses to your own Facebook post about this case confirm what I said in my June 17 letter: reasonable consumers do not share Ms. Webber’s interpretation of “Vanilla Cone,” no matter what ingredient(s) provide the cone’s vanilla flavor.

In sum, you never had a sufficient factual basis to bring these claims against McDonald’s in the first place. The Complaint is based on inapplicable FDA regulations and unconfirmed assumptions about the source of the vanilla flavor of the product. To the extent that there was ever any doubt about the legal inadequacy of your client’s claim, the United States District Court for the Southern District of New York just confirmed that your discussion of “federal standards for ice cream flavor descriptions is without consequence” in a private civil action. *Steele v. Wegmans Food Markets, Inc.* 19 Civ. 9227 (S.D.N.Y. Jul. 14, 2020). If that is true of a vanilla ice cream product produced labelled for consumer sale pursuant to FDA regulations, it is certainly true of a soft serve product *not required to comply with FDA labeling regulations* because it is sold in a restaurant setting. The Court in *Steele* also rejected your claim that consumers believe that “natural vanilla flavor is wholly or largely derived from vanilla beans.” *Id.*

In this case, the responses to your Facebook post also provide clear notice that reasonable consumers – and putative class members – do not believe what is alleged in the Complaint. The responses to the post—even though the post is false and misleading—confirm what the *Steele* court determined: consumers do not believe or expect that the product “contain real vanilla,” nor do they care – they buy the product because they like the price and the taste.

By signing and filing the Complaint “*or later advocating it*” you have certified under Federal Rule of Civil Procedure 11(b) that “the factual contentions have evidentiary support or, if

Spencer Sheehan

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July 16, 2020

specifically, so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.” Apart from the fact that your legal contentions are not “warranted by existing law,” as Steele makes clear, the responses to your Facebook post show *you do not and will have not have evidentiary support for your mistaken allegations about what reasonable consumers believe about this product.* In fact, you have evidence that shows the opposite.

Accordingly, we expect you to dismiss the Complaint before the deadline for McDonald’s to file a responsive pleading. If not, McDonald’s will vigorously defend this matter, including seeking sanctions against both your firm and your client pursuant to Rule 11 of the Federal Rules of Civil Procedure.

Very truly yours,



Sarah L. Brew

# EXHIBIT A



## Sheehan & Associates, P.C.

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Sheehan & Associates, P.C.

May 1 ·

Does your Vanilla Soft Serve Ice Cream contain real vanilla? Not according to class-action lawsuits and investigations. Is your favorite on the list?



Join The Investigation And Possible Class Action Lawsuit

[Sign Up](#)

79

70 Comments 16 Shares

[Like](#)

[Comment](#)

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All Comments



Write a comment...

...



Rebecca A Ceniceros

They are doing this with coffee creamer too ugh I didn't really think something that

...

isn't 100 percent natural had real vanilla that stuff is way expensive.

Like · Reply · 1w

1

Steve O'Dell

How or why is this even a thing right now (or ever for that matter)? Especially right now while people, business owners, businesses and the economy are struggling to maintain. Sad state of America...

Like · Reply · 9w

13

Susie Mango

Wtf I was just thinking I want some ice cream then I see this! They're reading our minds 😂

Like · Reply · 1w

3

Paula Laird

I'm sorry WHYYYY do we care?! If that the case our whole lives have been a LIE! Let's start with anything grape flavored. Has anyone noticed it taste NOTHING Like a grape? And who collectively got together and said "this flavor will be grape!"

Like · Reply · 1w

1

Ale Bee

there's no "gold" in goldfish either 😂 jk thought i'd try one

Like · Reply · 9w

...

12

Cofya Brizuela

The real question we should be asking is, does anyone ever even actually get one? Lol

Like · Reply · 9w

9

↳ 4 Replies

Julia Rose Yncera

I'm confused... did y'all really think there was fresh ground vanilla beans in your mcd's soft serve? 😂

Like · Reply · 9w

16

↳ 3 Replies

Alisson Smith

Because real ice cream isn't cheap.

...

But McDonald's ice cream still tastes good lol

Like · Reply · 9w

7

Becky Dillon

It's vanilla FLAVORED! No where do they claim to be real vanilla. Come on people. There are more important things to worry about!!!!

Like · Reply · 9w

13

↳ 2 Replies

Shannon Fisher

It's Mc Donald's.... does anyone actually think it's made with "real" vanilla???? 🙄🙄

Like · Reply · 9w

4

Farrin Bailey

They machine stay broke anyway so who cares 😂😂

...

Like · Reply · 9w

7

Greg Stokes

Ambulances too fast for you to chase Sheehan & Associates, P.C.?

...

And why do you have ten different pages?

Like · Reply · 3d

Jade Sriracha

this is what matters rn Natalie Jayne we need to be involved and informed of this movement

Like · Reply · 1w

2

Cruz Perez

Don't FCK with my ice cream!!!!

...

Like · Reply · 9w

6

Vincent Kou

Anyone else hear their root beer ain't got any beer in it either?? 🤪

...

Like · Reply · 9w

3

Hope Marie

There's no ginger in ginger ale either.

...

Like · Reply · 9w

5

Emmanuelle Martin  
Brandon Terry

...

Like · Reply · 1w

1

Erik M. Benjamin

Jason Mussman 1 Like · Reply · 1w

Arnold Arias There's no "coke" in Coca Cola either. 6 Like · Reply · 9w ↗ 1 Reply

Griz Sandoval How do I turn this off, first the cereal, then the lemon pops and now this. Go find real cases to press charges against! ... Like · Reply · 4d

Veriboo Rodriguez 1 Like · Reply · 1w

Brave Carson Like · Reply · 9w

Jose Luis Palacios It has beaver butt extract ... Like · Reply · 9w

Chef Joshua Thomas Oil ... Like · Reply · 9w

Veriboo Rodriguez CFoe Izmms ... Like · Reply · 1w

Alison Colcord Kayla Crosswhite Nyberg this is a real ad I got lmao 1 Like · Reply · 9w ↗ 1 Reply

Monica Castillo Fetzer Go Away!!!! Like · Reply · 9w

Lusu Renae Maloa-Taulealo Lol Brie Hutton ... Like · Reply · 3d ↗ 1 Reply

Missy Kerpakinstein They won't find anyone who had the ice cream to compensate because the ice cream machine was broken ... Like · Reply · 1w 2

Tita Zamora They did change the consistency. I don't know if any of you realized ... Like · Reply · 1w

Knowie Castillo Rios No Duh! they use vanillin, artificial vanilla. ... Like · Reply · 6d

George Mota Would explain why their machines are supposedly never woking ... Like · Reply · 1w 2 ↗ 1 Reply

Lorachristine Daniel Ramsey That's okay - it still tastes amazing ... Like · Reply · 1w

Deborah Assata Overton I wish in the heck, you wouldn't of showed that darn Ice Cream come, now I'm craving some. 3 Like · Reply · 1w



Dominav Miller

 This is embarrassing. I am embarrassed there's even a website lawsuit for this. You should feel ashamed. 

Like · Reply · 1w

 Alana Miller  
Okay. If you go to McDonalds thinking any of their food is real...I can't even.  

Like · Reply · 1w

 Charice Kang  
Literally was a whole documentary about it 

Like · Reply · 2w

 Si Guy  
Wtf I'm pissed. No vanilla in my soft serve? That's preposterous!!!   
Definitely was mislead and am upset!! 

Like · Reply · 2w

 Sarah Gibson  
Does this mean my French fries aren't French?!  

Like · Reply · 1w

 Trina Medeiros  
do you eat it & enjoy it?  than who cares 

Like · Reply · 1w

 Rebecca Spanich  
I do not even think it's a milk product 

Like · Reply · 1w

 Carrie Baker  
Anyone want to pay the price for real vanilla? 

Like · Reply · 9w

 Princess Mcgee  
Nothing to see here  

Like · Reply · 1w

 Carlos Smith  
Is unflavored a flavor? 

Like · Reply · 1w

 Jeremiah Robertson  
Vanilinan or artificial vanilla is a flavonoid derived from wood wood pulp and is extracted either chemically or through fermentation. The end product is nearly indistinguishable from vanilla extracted from the bean 

Here is a research paper discussing the process.  
[http://www.cell.com/molecular-plant/pdf/S1674-2052\(14\)00009-4.pdf](http://www.cell.com/molecular-plant/pdf/S1674-2052(14)00009-4.pdf)

Fun fact turns out the flavonoid in itself is anti microbial.

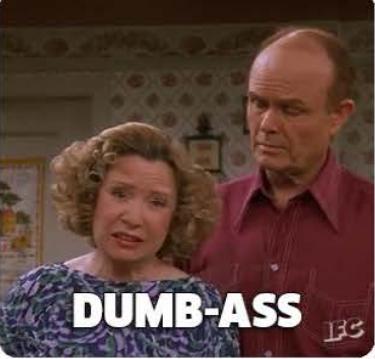
Like · Reply · 2w

 Kirsten Casillas 



Like · Reply · 3d

 Dorothy Aho \*\*\*



Like · Reply · 2w

 Andrez Escamilla \*\*\*

Who cares

Like · Reply · 6d

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